

Montana Water Court  
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**FILED**  
05/16/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
40D-0270-R-2023  
Nordlund, Julia  
2.00

IN THE WATER COURT OF THE STATE OF MONTANA  
LOWER MISSOURI DIVISION  
BIG DRY CREEK - BASIN (40D)  
PRELIMINARY DECREE

\*\*\*\*\*

CLAIMANT: Lee Murnion

**CASE 40D-0270-R-2023**

40D 152763-00

40D 152766-00

40D 152768-00

40D 152769-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Clerk of the Montana Water Court. Please review this Report carefully.

You may file a written objection to this Master's Report if you disagree or find errors with the Master's Findings of Fact, Conclusions of Law, or Recommendations. The above stamped date indicates the date this Master's Report was filed and mailed. Pursuant to Water Right Adjudication Rule 23, written objections to a Master's Report must be filed within **10 days** of the date the Report was filed. If this Master's Report was mailed to you, Rule 6(d) of the Montana Rules of Civil Procedure provides an additional 3 days to the 10-day objection period.

If you file an objection, you must mail a copy of the objection to all parties on the Service List found at the end of this Master's Report. The original objection and a

certificate of mailing to all parties on the Service List must be filed with the Water Court. If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

Claims 40D 152763-00, 40D 152766-00, 40D 152768-00, and 40D 152769-00 appeared in the Preliminary Decree for the Big Dry Creek (Basin 40D) with issue remarks resulting from pre-decree examination by the Department of Natural Resources and Conservation (DNRC). The claims did not receive objections, counterobjections, or notices of intent to appear. To address the issue remarks, the Water Court consolidated the claims into case 40D-0270-R-2023.

## FINDINGS OF FACT

1. Claim 40D 152763-00 received the following issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE IN GOVT LOT 3 IN THE SWNENW SEC. 4 TWP 17N RGE 38E GARFIELD COUNTY.

2. Claim 40D 152766-00 received the following issue remark:

THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION AND RESERVOIR RECORD. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE SWNW SEC 9 TWP 18N RGE 37E GARFIELD COUNTY.

3. Claimant was given a deadline of April 21, 2023. If nothing was filed, the Court stated it would change the abstracts to match what the remarks recommended.
4. No response was filed.
5. The new place of use for claim 40D 152763-00 is:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		3	SWNENW	SENW	4	17N	38E GARFIELD

6. The new place of use for claim 40D 152766-00 is:

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNW	N2NWSW	9	18N	37E	GARFIELD

7. These claims as well as the other claims in this also appeared with issue remarks providing notice of DNRC changes to the claims, the addition of a period of diversion to match the period of use, and/or excessive volume.

### CONCLUSIONS OF LAW

1. The Water Court has exclusive jurisdiction to determine the extent of all water rights in Montana as they existed prior to July 1, 1973. *In re Deadman's Basin Water Users Ass'n*, 2002 MT 15, ¶ 15; Section 3-7-501, MCA.
2. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248(2). The Court has authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.
3. When resolving issue remarks, the Court must weigh the issue remark and the information resulting in the issue remark against the claimed water right. Section 85-2-247(2), MCA. The Water Court is permitted to use information submitted by DNRC, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.
4. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie status may be overcome by a preponderance of the evidence showing that an element of the claim is incorrect. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33.
5. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Court, the Court may upon motion or its own initiative, issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

6. Sanctions for a claimant's failure to comply with an order issued by the Court in its review of issue remarks include: 1) amending elements of the claim to conform with information in the claim file, 2) amending element of the claim to conform with information obtained by the court, or 3) removing the issue remark. Section 85-2-248(9), MCA; Rule 22, W.R.Adj.R.
7. Claimant Lee Murnion failed to respond to the Water Court's Order Setting Filing Deadline. Therefore, it is proper for the Water Court to resolve the issue remarks and amend the claim element to conform with DNRC issue remarks.
8. The remarks served their purpose of giving basin-wide notice of the potential issues. No objections or notices of intent to appear were filed. These claims were properly filed rights. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. The issue remarks served their purpose and can be removed.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, the changes specified above should be adopted. Post-decree abstracts of the claims accompany this Order to confirm the changes have been made in the State's centralized water right record system.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

Lee Murnion  
PO Box 333  
Jordan, MT 59337-0333

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 152763-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEE MURNION  
PO BOX 333  
JORDAN, MT 59337 0333

**Priority Date:** OCTOBER 1, 1955

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF SAND CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3	SWNENW	4	17N	38E	GARFIELD

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
3	SWNENW	4	17N	38E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		3	SWNENW	4	17N	38E	GARFIELD

**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**BIG DRY CREEK**  
**BASIN 40D**

**Water Right Number:** 40D 152766-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEE MURNION  
PO BOX 333  
JORDAN, MT 59337 0333

**Priority Date:** OCTOBER 1, 1947

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF BIG DRY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2SWNW	9	18N	37E	GARFIELD

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNW	9	18N	37E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 23.00 FEET

**Depth:** 19.00 FEET

**Surface Area:** 2.82 ACRES

**Capacity:** 21.43 ACRE-FEET

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNW	9	18N	37E	GARFIELD

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

152766-00

152768-00

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

152766-00

152767-00

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 152768-00 STATEMENT OF CLAIM

**Version:** 4 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEE MURNION  
PO BOX 333  
JORDAN, MT 59337 0333

**Priority Date:** OCTOBER 1, 1947

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

**Volume:** 154.70 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 42.00

**Source Name:** UNNAMED TRIBUTARY OF BIG DRY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2SWNW	9	18N	37E	GARFIELD

**\*Period of Diversion:** MARCH 15 TO OCTOBER 20

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	S2SWNW	9	18N	37E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 23.00 FEET

**Depth:** 19.00 FEET

**Surface Area:** 2.62 ACRES

**Capacity:** 19.91 ACRE-FEET

**Period of Use:** APRIL 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	42.00		SW	9	18N	37E	GARFIELD

**Total:** 42.00

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**Remarks:**



THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

152766-00

152768-00

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BIG DRY CREEK  
BASIN 40D**

**Water Right Number:** 40D 152769-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** LEE MURNION  
PO BOX 333  
JORDAN, MT 59337 0333

**Priority Date:** DECEMBER 31, 1961

**Type of Historical Right:** USE

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 41.40 AC-FT

**Climatic Area:** 1 - HIGH

**Maximum Acres:** 18.00

**Source Name:** UNNAMED TRIBUTARY OF BIG DRY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2S2SW	16	18N	37E	GARFIELD

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** DAM

**Reservoir:** ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	N2S2SW	16	18N	37E	GARFIELD

**Diversion to Reservoir:** DIVERSION # 1

**Dam Height:** 11.60 FEET

**Depth:** 7.60 FEET

**Surface Area:** 0.68 ACRES

**Capacity:** 2.06 ACRE-FEET

**Period of Use:** APRIL 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	18.00		SW	16	18N	37E	GARFIELD

**Total:** 18.00